

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

THOMAS J. BRAATON,

Plaintiff,

vs.

NEXUS TREATMENT CENTER,
LAC; LORI, MD. DOCTOR
MENTAL HEALTH HOWARD,
STATE OF MONTANA,

Defendants.

CV-17-00086-GF-BMM-JTJ

ORDER

Plaintiff Thomas Braaton filed a Complaint pursuant to 42 U.S.C. § 1983 alleging that Nexus Treatment Center denied him adequate medical care. (Doc. 1.) The Court determined that the Complaint, as currently plead, failed to state a claim upon which relief may be granted on January 30, 2018. (Doc. 9.) Braaton had the opportunity to file an Amended Complaint on or before March 2, 2018. *Id.* Braaton failed to do so.

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on April 9, 2018. (Doc. 10.) Neither party filed objections. When a party makes no objections, the Court need not review *de novo*

the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1986). This Court will review Judge Johnston's Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Johnston determined that Braaton has failed to state a federal claim upon which relief may be granted. The Eighth Amendment requires that prisoners receive adequate medical care. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). To state a claim for failure to provide medical care, a prisoner must allege that the defendants acted with deliberate indifference. *Id.* at 106. Judge Johnston determined that Braaton has failed to set forth sufficient facts to show deliberate indifference to a serious medical need. (Doc. 9 at 6.) Braaton had the opportunity to amend his Complaint. He failed to do so. Judge Johnston recommends that this matter be dismissed. (Doc. 10 at 2.)

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 10), are ADOPTED IN FULL.

IT IS ORDERED that matter is DISMISSED for failure to state a federal claim.

IT IS ORDERED that the Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS ORDERED that the Clerk shall have the docket reflect that pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.

IT IS FURTHER ORDERED that the Clerk of Court shall have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) as Braaton failed to state a claim upon which relief may be granted.

DATED this 1st day of May, 2018.



Brian Morris
United States District Court Judge